NO. 41962-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

PATRICK HENRY POST,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Susan K. Serko

BRIEF OF APPELLANT

VALERIE MARUSHIGE
Attorney for Petitioner

23619 55TH Place South
Kent, Washington 98032
(253) 520-2637

TABLE OF CONTENTS

Page

A. ASSIGNMENTS OF ERROR 1

Issues Pertaining to Assignments of Error 1

B. STATEMENT OF THE CASE 2

1. Procedural Facts 2

2. Substantive Facts 3

C. ARGUMENT 10

1. THE TRIAL COURT ERRED BY IMPROPERLY ADMITTING EVIDENCE OF POST'S PRIOR BAD ACTS UNDER RCW 10.58.090 AND ER 404(B). 10

2. THE PROSECUTOR COMMITTED MISCONDUCT DURING CLOSING ARGUMENT DENYING POST HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL. 14

3. SEALING JURY QUESTIONNAIRES WITHOUT A BONE-CLUB ANALYSIS VIOLATES THE CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL. 18

D. CONCLUSION 20

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

In re Stockwell,
160 Wn. App. 172, 181 248 P.3d 576 (2011) 20

State v. Belgrade,
110 Wn.2d 504, 755 P.2d 174 (1988) 14

State v. Bone-Club,
128 Wn.2d 254, 906 P.2d 325 (1995) 18

State v. Charlton,
90 Wn.2d 657, 585 P.2d 142 (1978) 14

State v. Davenport,
100 Wn.2d 757, 675 P.2d 1213 (1984) 15

State v. DeVincentis,
150 Wn.2d 11, 74 P.3d 119 (2003) 11

State v. Fisher,
165 Wn.2d 727, 202 P.3d 937 (2009) 15

State v. Fleming,
83 Wn. App. 209, 921 P.2d 1076 (1996) 15

State v. Foxhoven,
161 Wn.2d 168, 163 P.3d 786 (2007) 12

State v. Gresham,
173 Wn.2d 405, 269 P.3d 207 (2012) 10

State v. Johnson,
158 Wn. App. 677, 243 P.3d 936 (2010) 15

TABLE OF AUTHORITIES

Page

State v. Lough,
125 Wn.2d 847, 889 P.2d 487 (1995) 12

State v. Saltarelli,
98 Wn.2d 358, 655 P.2d 697 (1982) 12

State v. Smith,
106 Wn.2d 772, 725 P.2d 951 (1986) 12

State v. Smith,
162 Wn. App. 833, 262 P.3d 72 (2011) 20

State v. Strode,
167 Wn.2d 222, 217 P.3d 310 (2009) 19

State v. Tarhan,
159 Wn. App. 819, 246 P.3d 580 (2011) 18

State v. Thach,
126 Wn. App. 297, 106 P.3d 782 (2005) 13

State v. Webber,
99 Wn.2d 158, 659 P.2d 1102 (1983) 15

State v. Wilson,
144 Wn. App. 166, 181 P.3d 887 (2008) 14

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Smith v. Phillips,
455 U.S. 209, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982) 15

RULES, STATUTES, OTHERS

ER 404(b) 12

Const. Art. I, section 10 19

Const. Art. I, section 27 19

A. ASSIGNMENTS OF ERROR

1. Did the trial court err in admitting evidence of appellant's prior bad acts under RCW 10.59.090 and without an ER 404(b) analysis?

2. Did the prosecutor commit misconduct during closing argument by using the puzzle analogy while describing reasonable doubt where this Court has held that such an argument is erroneous and improper?

3. Were the jury questionnaires improperly sealed without a Bone-Club hearing and court order to seal the jury questionnaires in violation of the constitutional right to a public trial?

Issues Pertaining to Assignments of Error

1. Did the trial court err in admitting evidence of appellant's prior bad acts under RCW 10.59.090 which the Washington Supreme Court has deemed unconstitutional and admitting the evidence under ER 404(b) without conducting the required 404(b) analysis on the record?

2. Did the prosecutor commit misconduct during closing argument by using the puzzle analogy to describe reasonable doubt disregarding this Court's previous decision that such an argument is improper?

3. Were the jury questionnaires improperly sealed in violation of the right to a public trial where the court concluded that it would not

seal the questionnaires and consequently did not conduct a Bone-Club hearing?

B. STATEMENT OF THE CASE[1]

1. Procedural Facts

On October 27, 2009, the State charged appellant, Patrick Henry Post, with one count of rape of a child in the first degree and two counts of child molestation in the first degree, alleging that the offenses occurred between June 19, 2005 and June 23, 2008. CP 1-2. The State amended the information on February 7, 2011, charging Post with one count of rape of a child in the first degree and one count of child molestation in the first degree, alleging that the offenses occurred between December 1, 2002 and March 1, 2007. CP 7-8.

Following a trial before the Honorable Susan K. Serko, on March 1, 2011, a jury found Post guilty as charged. On April 8, 2011, the court sentenced Post to 318 months in confinement and community custody for life. CP 88-89.

Post filed this timely appeal. CP 100.

[1] There are six volumes of verbatim report of proceedings: 1RP - 02/10/11, 02/14/11; 2RP - 02/15/11, 02/16/11; 3RP - 02/17/11, 02/23/11; 4RP - 02/24/11, 02/28/11; 5RP - 03/01/11, 04/08/11; 6RP - 02/16/11 (opening statements).

2. Substantive Facts

a. Pretrial

After hearing argument from defense counsel and the State, the trial court ruled that evidence of Post's prior convictions for indecent liberties were admissible under RCW 10.58.090 and ER 404(b). 1RP 51-56.

b. Trial Testimony

M.M., who was ten years old at the time of trial, knows Patrick Post as "Papa Post." 2RP 210, 215-16. M.M. testified that Post lived in an R.V. and when she was alone with him, he touched her "private parts." 2RP 218-19. He reached down her pants but never removed her clothes. 2RP 219-20. Post also licked and touched her private parts with "toys" that looked like "boy private parts" and vibrated. 2RP 220-21. M.M. saw Post's "boy private part" and he showed her magazines with pictures of naked women and "romance movies" which sometimes had naked people. 2RP 221-23. This happened when she was about three years but she did not tell anyone until she told her great grandmother when she was eight. 2RP 226-27, 246. Her great grandmother said Post had gotten in trouble for doing this before. 2RP 249-50.

Mary Anderson is M.M.'s great grandmother. 2RP 311-13. Anderson testified that M.M. lived with her and her husband, Dennis

Anderson, from March 2007 to September 2008. 2RP 314. On June 18, 2008, Anderson was helping M.M. prepare for bed. After M.M. took a shower, she told Anderson that she had a secret she had been keeping for a long time. 2RP 315-16. M.M. said "Papa Pat had touched her and kissed her in her private places." 2RP 316. They both became upset and started crying and Anderson took M.M. to tell her great grandfather, "just share with him what she just told me because I didn't want to be the only one knowing." 2RP 316-17. Anderson contacted Child Protective Services (CPS) and M.M.'s mother the next day. 2RP 321. M.M. later revealed more details about what happened with Post. 2RP 319. Anderson learned about Post's prior convictions from M.M.'s mother but did not tell M.M. about the convictions. 2RP 326-27, 329-30. Dennis Anderson testified that his wife and M.M. came into the bedroom because M.M. had something to share with him. 2RP 334-35. M.M. said Papa Pat had touched her "[i]nappropriately in her privates." 2RP 334-35.

Mary Mason is M.M.'s mother and knows Post as the stepfather of her ex-husband JR Herrington.[2] 2RP 260-62. Mason and her two children, M.M. and E.M., moved in with Herrington and they were married in October 2003. 2RP 263-65. Herrington and Mason both worked so they

[2] Mary Mason also goes by her middle name, Christina, but is referred to as Mary for consistency.

had babysitters or JR's mother, Vicki Herrington, would watch the children. Mason recalled "one time in particular" when Post watched the children. 2RP 270-71. In February 2007, the State removed her children from the home due to abuse and neglect. 2RP 272. M.M. was placed with Mason's grandparents, Mary and Dennis Anderson. 2RP 273. Thereafter, Mason and Herrington got divorced in August 2007. 2RP 275. Before the divorce was finalized, Mason learned about Post's prior convictions for indecent liberties from CPS. 2RP 276-77. Mason went to the courthouse and examined the file then told her grandmother about the convictions but never discussed them with M.M. 2RP 277-78.

Mason first heard about what happened to M.M. at her grandmother's house on June 19, 2008 when CPS and law enforcement were notified. 2RP 280-82. M.M. disclosed details about what Post did when she moved back home with Mason in September 2008. 2RP 282-85. Mason admitted that she and Herrington owned sex toys. 2RP 278-79. She recalled that Kathryn Hendershot and Tara Dodd worked for her as babysitters but she never confided in them about any sex toys. 2RP 288-91. Mason acknowledged that after the divorce, she and Herrington continued to have disputes over custody of the children and visitation. 2RP 297.

On June 24, 2008, Deputy Mark Gosling was dispatched to a home to investigate a report of an alleged sex crime. 3RP 378. Gosling testified that he spoke with Mary Anderson and her granddaughter, Mary Mason. 3RP 378-79. They identified the alleged perpetrator as Patrick Post and the alleged victim as M.M. 3RP 379-80. After completing his investigation, he forwarded his report to the detectives unit. 3RP 381-82. Detective Lynelle Anderson reviewed Gosling's report and arranged a forensic interview of M.M. at the Child Advocacy Center. 3RP 437-39. Anderson testified that she observed the recorded interview from an adjacent room on July 29, 2008. 3RP 442-44. During the interview, M.M. made two drawings which Anderson obtained as evidence. 3RP 445. Anderson located Post and his R.V. but did not seek a warrant to search the R.V. 3RP 448-50.

Cornelia Thomas is a forensic interviewer at the Child Advocacy Center. 3RP 472. Thomas testified that she conducted a recorded interview of M.M. and she identified the DVD of the interview which was played for the jury. 3RP 491-95. Thomas acknowledged that during the interview, M.M. told her that grandma said Post got in trouble for doing the exact same thing to other children. 3RP 498. Joanne Mettler, a registered nurse practitioner, examined M.M. on July 22, 2008. 3RP 420-21. M.M. told her that "Pat had done some bad things to her and had

indicated that he had touched her in wrong places." 3RP 424. Although Mary Anderson told Mettler that Post had touched M.M. with a toy, when Mettler asked M.M., she said she could not remember. 3RP 430-32. M.M.'s physical examination was "normal" with no signs of trauma or abuse. 3RP 425. Mettler claimed that 95 to 98 percent of the time, there are no physical findings in cases of child sexual abuse. 3RP 426.

JR Herrington is the son of Vicki Herrington who had a relationship with Post and he has known Post as his stepfather. 4RP 517-18. Herrington and his former wife, Mary Mason, had a son together; Mason had two children, M.M. and E.M.; and he had a daughter from a previous relationship. 4RP 518-19. The children loved Post and called him "Papa." 4RP 521. Post never babysat the children except on two special occasions when Herrington and Mason went out to celebrate. 4RP 421, 527-29. They also had two babysitters, Kathryn Hendershot and Tara Dodd. 4RP 523-26. Herrington acknowledged that he and Mason had sex toys, adult magazines, and movies. On one occasion, M.M. found their dildo and one of his magazines at another time when he left it in the bathroom. 4RP 530-33. M.M. never expressed any reluctance to be around Post. 4RP 534. Herrington recalled that Post told him that he owned a dildo. 4RP 536. He was aware of Post's prior convictions and told Mason about them before they were married. 4RP 539-40.

Vicki Herrington has had a relationship with Post "in and out for over 40 years." 4RP 542-43. They have a daughter, Candi, and Herrington has two sons, JR and Russell. 4RP 542-43. Herrington testified that after JR married Mary, she watched their children numerous times and Post was with her a couple of times. 4RP 545-46. They also had family dinners together and she saw M.M. interact with Post many times. 4RP 546-47. M.M. always called him "Papa." 4RP 547. When Post was charged in 1986 for molesting Candi, Herrington was accused of telling Candi not to testify against her father. 4RP 550-51. Herrington explained that she was arrested but only told her daughter that "if she did not want to be there, it was her choice." 4RP 551-523.

Sharon Cormier managed a mobile home park where JR Herrington lived with his wife, Mary, and their children. 4RP 560- 61. Cormier testified that when Post came to visit, "the kids were excited to see him" and they "looked like a normal family." 4RP 563-64. Cormier was aware of Post's past conviction. 4RP 563. She never saw M.M. express any reluctance or hesitation to be around Post. 4RP 564. When JR and Mary's marriage failed and they were going through a divorce, Mary told her that she would get even with him and his family, "she said she would create hell for all of them." 4RP 575-77.

Kathryn Hendershot lived with the JR and Mary Herrington during April to September 2006 and watched their children while they were working. 4RP 580-81. Hendershot testified that she knew Post as "JR's step dad" and he came over to pick up the children when she needed some time off. 4RP 581. Hendershot had a close relationship with M.M. who confided in her about "a lot of things." 4RP 582. M.M. never told her that Post had done anything to her. 4RP 582-83. Hendershot and Mary developed a friendship and during "girl talk," Mary told her that she bought a dildo. 4RP 583-84.

Tara Dodd worked as a babysitter for the Herringtons from September 2006 to February 2007. 4RP 588. Dodd testified that whenever Post visited the children they were happy and excited to see him. 4RP 590-91. Sometime in 2007, when Mary and JR were going through a divorce, Mary showed her a record of Post's criminal history. 4RP 591-92. Dodd recalled having a conversation with Mary where she said that she and JR regularly used sex toys. 4RP 591.

c. Jury Questionnaires

Following a discussion with defense counsel and the State, the court decided not to seal the jury questionnaires. 3RP 412-14.

d. Closing Argument

During closing argument, the prosecutor used a puzzle analogy to explain reasonable doubt. The prosecutor told the jury that even if a big piece of the puzzle is missing, it should not have a reasonable doubt. 4RP 657-58.

C. ARGUMENT

1. THE TRIAL COURT ERRED BY IMPROPERLY ADMITTING EVIDENCE OF POST'S PRIOR BAD ACTS UNDER RCW 10.58.090 AND ER 404(B).

Reversal is required because the trial court admitted evidence of Post's prior bad acts under RCW 10.58.090 which has been declared unconstitutional and the court failed to conduct the required analysis before admitting the evidence under ER 404(b).

The Washington Supreme Court recently held in State v. Gresham, 173 Wn.2d 405, 269 P.3d 207 (2012), that RCW 10.58.090 is unconstitutional. The Court concluded that the statute violates the separation of powers doctrine because it irreconcilably conflicts with ER 404(b) regarding a procedural matter. Gresham, 173 Wn. 2d at 432. In unrelated trials, a jury convicted Gresham of three counts of first degree child molestation and one count of attempted first degree child molestation and a jury convicted Scherner of three counts of first degree child

molestation. Id. at 417-18. In Gresham's trial, the court found that evidence of his prior sex offense was not admissible under ER 404(b) but admitted it under RCW 10.58.090. Id. at 418. In Scherner's trial, the court admitted evidence of prior sex offenses under both RCW 10.58.090 and ER 404(b). Id. at 415-16. The Supreme Court reversed Gresham's conviction because evidence of his prior bad acts was not admissible under ER 404(b) and admission of the evidence was not harmless error. The Court affirmed Scherner's conviction because evidence of his prior bad acts was admissible under ER 404(b) for the purpose of demonstrating a common scheme or plan. Id. at 432-34.

Here, the State moved to admit evidence of Post's prior convictions for two counts of indecent liberties under RCW 10.58.090 and ER 404(b). 2RP 28-31, 37-39, 48-51. Defense counsel objected to admission of the prior convictions, arguing that it constitutes propensity evidence. 2RP 39-48. The trial court conducted a statutory analysis and concluded that the evidence was admissible under RCW 10.58.090. The court also concluded that the evidence was admissible under ER 404B(b) but did not perform an analysis on the record. 2RP 51-56.

"A trial court must always begin with the presumption that evidence of prior bad acts is inadmissible." State v. DeVincentis, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). ER 404(b) is designed to prevent the

State from suggesting that a defendant is guilty because he is a criminal-type person who would be likely to commit the crime charged.[3] State v. Lough, 125 Wn.2d 847, 859, 889 P.2d 487 (1995). Before admitting evidence under ER 404(b), the trial court must (1) find by a preponderance of the evidence that the misconduct occurred; (2) identify the purpose for admission; (3) determine whether the evidence is relevant to prove an element of the crimes charged; and (4) weigh the probative value against its prejudicial effect. State v. Foxhoven, 161 Wn.2d 168, 175, 163 P.3d 786 (2007). "This analysis must be conducted on the record." Id. (citing State v. Smith, 106 Wn.2d 772, 776, 725 P.2d 951 (1986)). "A careful and methodical consideration of relevance, and an intelligent weighing of potential prejudice against probative value is particularly important in sex cases, where the prejudice potential of prior acts is at its highest." State v. Saltarelli, 98 Wn.2d 358, 363, 655 P.2d 697 (1982).

Defense counsel's belief that the court's analysis under RCW 10.59.090 satisfied the 404(b) factors, notwithstanding, the court failed to conduct the 404(b) analysis on the record as required. 2RP 56.

[3] ER 404(b) provides that "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Consequently, the court erred in admitting the evidence under the statute which has been deemed unconstitutional and erred in admitting the evidence under ER 404(b) without a proper analysis. The court's erroneous admission of the evidence was not harmless because the record substantiates that the outcome of the trial would have been different but for the error. State v. Thach, 126 Wn. App. 297, 311, 106 P.3d 782 (2005).

The record reflects that the State's case was predicated on the fact of Post's prior convictions beginning with the State's opening statements where the prosecutor showed the Findings of Fact and Conclusions of Law to the jury. The prosecutor methodically restated all the findings made by the judge and the judge's conclusion that Post molested his 12-year-old daughter and her 11-year-old friend. 6RP 13-19; Ex. 14. The prosecutor used the evidence throughout the trial and in closing argument to bolster the State's case. Pointing out that there were no eye witnesses, the prosecutor emphasized the significance of Post's prior convictions:

> I submit to you that there would be a tough task at hand for you during your deliberation process if this was simply a situation where [M.M.] was saying to all of you, to 14 of you as she's said to others, the defendant touched her privates and licked her privates, and that disclosure exists in a vacuum. The difference in this case, ladies and gentlemen, [M.M.'s] not alone, she's not standing alone. Candi Herrington who was 12 years old in 1984 and '85 is standing right there with her. Heidi Fletcher who was 11 years old is standing right there with her. And they're saying to [M.M.] and they're saying to you in the words

> that will come off the paper of Judge Swayze when he presided over that trial in 1986. The defendant did this to [M.M.], right there and then you have Candi and Heidi telling you, because he did it to us too.

6RP 625-26.

The defense theory of the case was that M.M. "has been used as a pun to carry out her mother's threat to make JR Herrington and his family's life a living hell. And it has been hell." 4RP 630. In light of the conflicting evidence which raised reasonable doubt, reversal is required where, as admitted by the prosecutor, the State's case was far from overwhelming. See State v. Wilson, 144 Wn. App. 166, 175-78, 181 P.3d 887 (2008).

2. THE PROSECUTOR COMMITTED MISCONDUCT DURING CLOSING ARGUMENT DENYING POST HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Reversal is required because the prosecutor's flagrant and ill-intentioned misconduct denied Post his constitutional right to a fair trial.

A prosecuting attorney's duty is to see that an accused receives a fair trial. State v. Belgrade, 110 Wn.2d 504, 516, 755 P.2d 174 (1988). "Prosecutorial misconduct may deprive the defendant of a fair trial. And only a fair trial is a constitutional trial." State v. Charlton, 90 Wn.2d 657, 664-65, 585 P.2d 142 (1978). In cases of prosecutorial misconduct, the touchstone of due process analysis is the fairness of the trial, that is, did

the misconduct prejudice the jury thereby denying the defendant a fair trial guaranteed by the due process clause. Smith v. Phillips, 455 U.S. 209, 210, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982); State v. Webber, 99 Wn.2d 158, 164-65, 659 P.2d 1102 (1983). Accordingly, the ultimate inquiry is not whether the misconduct was harmless or not harmless but rather did the impropriety violate the defendant's due process right to a fair trial. State v. Davenport, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984).

A defendant claiming prosecutorial misconduct must show both improper conduct and resulting prejudice. State v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009). Improper prosecutorial arguments are flagrant and ill-intentioned where an appellate court has previously recognized those arguments as improper in a published opinion. State v. Fleming, 83 Wn. App. 209, 213-14, 921 P.2d 1076 (1996).

In State v. Johnson, 158 Wn. App. 677, 243 P.3d 936 (2010), the prosecutor discussed the "abiding belief" aspect of the standard of reasonable doubt during closing argument:

> I like to look at abiding belief and use a puzzle to analogize that. You start putting together a puzzle and putting together a few pieces, and you get one part solved. So with this one piece, you probably recognize there's a freeway sign. You can see I-5. You can see the word "Portland" from looking in the background. You may or may not be able to see which city that is, but it is probably near one that is on the I-5 corridor.

> You add another piece of the puzzle, and suddenly you have a narrower view. It has to be a city that has Mount Rainier in the background. You can see it. It can still be Seattle or Tacoma, or it if you weren't familiar, you might think that mountain might be Mt. Hood, and it could be Portland.
>
> You add a third piece of the puzzle, and at this point even being able to see only half, you can be assured beyond a reasonable doubt this is going to be picture of Tacoma.

Johnson, 158 Wn. App. at 682.

This Court held that the prosecutor's argument discussing the reasonable doubt standard in the context of making an affirmative decision based on a partially completed puzzle was improper because it "trivialized the State's burden, focused on the degree of certainty the jurors needed to act, and implied that the jury had a duty to convict without a reason not to do so." Johnson, 158 Wn. App. at 685.

The prosecutor here made a similar argument, misleading the jury on the State's burden of proof beyond a reasonable doubt:

> At the beginning of this trial, you were a blank slate, you had no evidence. And I told you at that time that the defendant was guilty of rape of a child in the first degree and child molestation in the first degree, just like right now I'm telling you this is a picture of the city of Seattle. Over the course of this trial, pieces of the puzzle began to fall into place.
>
> Now I show this to you because I submit to you this is a picture of Seattle. I state that to you because there is Mount Rainier, there is the Space Needle and you see a little bit of KeyArena. But I'm also going to grant you that there's still a big piece of the puzzle missing. There is no eye witnesses, there is no medical evidence. The only

> question then is even though not every one of your questions has been answered, and even though there may still be doubts, are they reasonable ones? Would you have a reasonable doubt even though a big piece of the puzzle is missing that this is a picture of the city of Seattle? And I submit to you, you shouldn't, and you wouldn't, and then you would be right.

6RP 657-58.

This Court published Johnson on November 24, 2010, three months before the prosecutor made his pieces of the puzzle argument on February 28, 2011. Consequently, the prosecutor committed flagrant and ill-intentioned misconduct because he disregarded this Court's previous holding that trivializing and misstating the State's burden of proof was improper. Fleming, 83 Wn. App. at 213-14. The prosecutor's argument here was clearly flagrant and ill-intentioned where he argued that reasonable doubt was met even when a "big piece of the puzzle" is missing as opposed to "half" the puzzle as argued in Johnson.

Reversal is required because the prosecutor's conduct was improper and Post was prejudiced as a result of the misconduct because the prosecutor's argument confused the jury's duty to find Post not guilty unless the State proved its case against him beyond a reasonable doubt with the notion that it should convict him unless it found a reason not to do so, allowing the jury to render a decision based on a standard substantially less than what due process requires.

3. SEALING JURY QUESTIONNAIRES WITHOUT A BONE-CLUB ANALYSIS VIOLATES THE CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL.

Reversal is required because the jury questionnaires were sealed without a Bone-Club hearing and a court order to seal the questionnaires in violation of the right to public trial.

Article I, section 10 of the Washington Constitution provides that "Justice in all cases shall be administered openly." Division One of this Court recently concluded in State v. Tarhan, 159 Wn. App. 819, 246 P.3d 580 (2011), that a trial court must conduct a Bone-Club[4] analysis before sealing jury questionnaires and the court's failure to do so violates the public's right to open and accessible court proceedings under article I,

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[4] The trial court must perform a weighing test consisting of five criteria:

1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to fair trial, the proponent must show a "serious and imminent threat" to that right.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose.

State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).

section 10. 159 Wn. App. at 834. The court held that the appropriate remedy is to remand the case for reconsideration of the sealing order in light of Bone-Club and other relevant authority. 159 Wn. App. at 835. Tarhan filed a petition for review arguing that sealing of the jury questionnaires without a Bone-Club hearing violates the right to an open and public trial which constitutes structural error warranting a new trial. The Washington Supreme Court accepted review and a decision is pending (Supreme Court No. 85737-7).

Here, during trial, the court discussed whether the jury questionnaires should be sealed noting conflicting Court of Appeals decisions. 1RP 18-21, 3RP 412-414. The State urged the court not to seal the questionnaires and defense counsel left it to the discretion of the court. The court concluded, "I'm going to leave them open." 3RP 414. Despite the court's ruling, the jury questionnaires were inexplicably sealed. Supp. CP ___ (Sealed Jury Questionnaires, 02/15/11).

Sealing jury questionnaires without a proper Bone-Club hearing violates Wash. Const., article I, section 22 and article I, section 10 which protects the right to a public trial. The violation of the right to an open and public trial is a structural error and the remedy is a remand for a new trial. See State v. Strode, 167 Wn.2d 222, 231, 217 P.3d 310 (2009).

Post is aware of this Court's decisions in State v. Smith, 162 Wn. App. 833, 262 P.3d 72 (2011)(the court did not err in sealing the jury questionnaires without a Bone-Club analysis) and In re Stockwell, 160 Wn. App. 172, 181 248 P.3d 576 (2011)(sealing of jury questionnaires does not constitute structural error). However, he respectfully requests that this Court stay its decision on this issue pending a decision by the Washington Supreme Court.

D. CONCLUSION

For the reasons stated, this Court should reverse Mr. Post's convictions.

DATED this 19th day of March, 2012.

Respectfully submitted,

Valerie Marushige

VALERIE MARUSHIGE
WSBA No. 25851
Attorney for Appellant, Patrick Henry Post

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office 930 Tacoma Avenue South, Tacoma, Washington 98032 and Patrick Henry Post, DOC # 924412, Coyote Ridge Corrections Center, 1301 N Ephrata Avenue, P.O. Box 769, Connell, Washington 99326.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of March, 2012 in Kent, Washington.

Valerie Marushige

VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851